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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Competitive Bidding Process
For Report To Congress

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WT Docket No. 97-150

To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to the July 2, 1997 Public Notice of the Federal Communications Commission (the "Commission"),^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits these Comments in response to the Commission's inquiry on the competitive bidding process authorized by Congress in Section 309(j) of the Communications Act of 1934, as amended.^{2/}

In the Public Notice, the Commission states that, to date, its spectrum auctions "have raised a total of \$23.1 billion for the U.S. Treasury."^{3/} This number, however, is misleading because it appears to include the billions of dollars in installment payments that have yet to be paid by "designated entity" auction winners. For the C Block auction alone, the Commission has overcounted by \$2.5 to \$3.5 billion (the present cash value of the installment

^{1/} Public Notice, "Commission Opens Inquiry On Competitive Bidding Process for Report To Congress," Docket No. WT 97-150, released July 2, 1997.

^{2/} 47 U.S.C. Section 309(j).

^{3/} Public Notice at p. 1.

payments). Additionally, should the Commission adopt certain of the debt relief proposals proffered by C Block licensees, its total auction revenue would have to be further reduced by as much as \$5 billion. In other words, the Commission's claims of \$23.1 billion could potentially be overstated by approximately 33%.

Nextel files these comments for two purposes: (1) to request statutory changes that would prohibit the use of designated entity set-asides and installment payments; and (2) to emphasize the importance of consistent Commission enforcement of its auction rules. The Commission's use of competitive bidding to select from among mutually exclusive applications generally has been successful in enabling the efficient assignment of telecommunications licenses. This has been due, in large part, to the Commission's willingness -- until recently -- to consistently and evenhandedly enforce its auction rules on all parties.

As a provider of wireless telecommunications services in an increasingly competitive Commercial Mobile Radio Services ("CMRS") marketplace, Nextel welcomes this opportunity to comment on the efficiency of the Commission's auction processes to date. The Report to Congress should be a success story -- unless, however, the integrity of the process is undermined by the Commission's granting an unwarranted C Block bailout.

II. BACKGROUND

Nextel is a provider of traditional and wide-area Specialized Mobile Radio ("SMR") services throughout the United States. Traditional SMR services provide users analog dispatch -- or

"fleet" -- communications over a limited geographic area. Wide-area SMR services are enhanced digital telecommunications services that provide consumers a combination of services, including cellular telephone, paging, dispatch and one-to-one calling, and short messaging. These wide-area digital SMR services are competing with cellular and Personal Communications Services ("PCS") in a number of markets around the country.

Nextel provides its services using both 800 and 900 MHz SMR frequencies. Therefore, as a holder of not only site-specific 800 MHz SMR licenses but also 900 MHz SMR Major Trading Area-based licenses, Nextel is both a past and prospective auction participant. Nextel actively participated in the 900 MHz SMR auction and currently plans to participate in the upcoming auction of the upper 200 800 MHz SMR channels. Also, Nextel carefully considered participating in the PCS auctions -- both the A/B and the C Block -- but, based on the rules established by the Commission for each of those auctions, opted not to bid on PCS licenses.

III. DISCUSSION

A. Congress Should Amend the Statute To Prohibit Installment Payments and Set-Aside Spectrum

The Commission's auction experiences to date have demonstrated the ineffectiveness of installment payments and spectrum set-asides in fulfilling Congress' goal of providing opportunities for small business participation in the wireless telecommunications marketplace. The most notable set-aside auction, the PCS C Block auction, resulted in multi-billion dollar bids by companies with

backing from major multi-national conglomerates. This certainly did not encourage bidding by "small businesses," which, for example, are defined in the 800 MHz SMR auction rules as companies with \$15 million in average gross revenues over the preceding three years. Such a company could never expect to bid the nearly \$5 billion dollars that was necessary to succeed in the C Block auction.

Set-aside auctions, moreover, skew the competitive factors that go into bidding strategies and decisions. A set-aside auction is by its nature "lifted" out of marketplace realities, and companies are guided by considerations that may not be supported by the economics of the "real world." Because these "small businesses," for example, are not forced to bid against Sprint, AT&T and other deep-pocketed companies, they feel unconstrained by the competitive forces that should shape their decisions. The marketplace will not be so kind, however, as C Block winners have subsequently discovered. In contrast, the Commission did not set aside particular spectrum blocks for small businesses in the 900 MHz SMR auction, but it did provide them assistance in bidding against larger businesses. The result was that 900 MHz SMR licenses were distributed among both large and small businesses, all of which made timely license payments.

Installment payment plans are inappropriate for Commission spectrum auctions because they encourage speculation among bidders, i.e., the C Block bidders who doubled the A and B Block bids, thereby increasing the number of bidders unable to fulfill their

obligations. While an inability to pay is a possibility with any winning bidder, the Commission should not increase the odds of bidder default by providing for installment payments, particularly when there are other, more direct, means of supporting small business participation in the auction process, e.g., bidding credits. Installment payment plans, moreover, place the Commission in the dual position of bill collector and industry regulator. These two roles pose an inherent and unavoidable conflict that can force the Commission to compromise its regulatory role for the sake of resolving debtors' problems.

In 1934, Congress established the Commission "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . ."^{4/} Nowhere in the Communications Act of 1934, as amended, did Congress establish revenue-raising as a goal or mandate of the Commission, and no where did Congress establish the Commission as a bill collection agency. The Commission cannot maintain its focus on promoting the public interest in efficient and effective spectrum use while attempting to collect billions of dollars for the Federal Treasury. The two goals are not consistent. Therefore, Congress should prohibit the use of installment payments in spectrum auctions and thereby ensure that the Commission never again establishes itself as a bill collector for the federal government.

^{4/} 47 U.S.C. Section 151.

Finally, in reviewing the spectrum auction process, Congress should recognize what Chairman Reed Hundt referred to as the "pressing need for the government to be able to protect its interest in spectrum licenses."^{5/} Protecting the government's interest in these licenses requires clarification that a bankrupt licensee and any of its creditors "have absolutely no right whatsoever to hold, retain, litigate about, or delay the revocation of any license when that licensee has not paid monies it promised the American people."^{6/} Clarifying that bankruptcy does not interfere with the Commission's ability to reclaim a spectrum license when a licensee fails to fulfill the conditions of that license would provide much-needed certainty to the licensing process.

B. The Commission Must Enforce Its Rules

Regardless of the decisions the Commission and Congress reach herein, every one will be irrelevant to the future of auctions if the Commission is not willing to enforce its rules consistently and evenly on all participants. The Commission's recent flirtation with an after-the-fact wholesale bail-out of C Block PCS licensees who claim to be unable to comply with the rules, threatens the integrity of the entire licensing process. Once adopted, rules must be enforced; otherwise, the entire auction process is threatened. Future auction participants will have no regulatory

^{5/} Letter from Chairman Reed Hundt to The Honorable John R. Kasich, Chairman of the Committee on the Budget, dated July 17, 1997.

^{6/} *Id.*

certainty concerning their auction participation, and funding sources will be more scarce.

Auction rules provide potential bidders notice of the parameters within which they should plan their bidding strategies. With regard to the C and F block bidders, the rules enabled them to create bidding entities designed to fit the Commission's specified programs and plan their business and bidding strategies accordingly. Similarly, bidders in other auctions, e.g., 900 MHz SMR and other PCS auctions, relied (and continue to rely) on the Commission's rules in developing their bidding and long-term business strategies. Moreover, many potential bidders, including Nextel, relied on the C and F Block rules in deciding not to participate in those auctions, and instead focus on other spectrum auctions -- with rules more favorable to their particular business plans. The point is that once adopted, the rules must be enforced.^{7/}

The auction rules shaped decisions to withdraw from the C Block auction as bids continued to escalate. Faced with the obligation to make timely payments or lose their licenses, many bidders, e.g., Go Communications, decided to drop out rather than risk obtaining an overpriced license for which it could not fulfill

^{7/} There may be circumstances which justify prospective changes in the Commission's auction rules, e.g., refining certain auction rules for future spectrum auctions based on past auction experiences. However, such changes should only occur through a notice and comment rule making, and they should only apply prospectively. Changes in the auction rules cannot be applied to past auctions, and certainly should not be applied to particular participants in a past auction.

its debt obligations. Thus, failure to enforce the auction rules undermines the integrity of the Commission's rules for all other companies who have or will consider auction participation. For them, reliance on the rules as written could prove to be a bad business decision if the Commission is willing to change them for those who cannot survive within their parameters. Moreover, undermining the integrity of the auction rules creates additional uncertainties for potential investors who must make their investment decisions based on, among other things, the Commission's bid payment obligations.

III. CONCLUSION

Until recently, the Commission's auction processes were successful in rapidly licensing new and enhanced services, and thereby speeding their deployment to the public. The only problems encountered in the auction process have been installment payments and set-asides, which skewed marketplace realities, encouraged speculation, and created bidders unable to fulfill their bid obligations. Worse yet, these problems have resulted in a Commission willing to consider wholesale changes to its rules after the fact.

Nextel, therefore, respectfully submits that the auction process will be improved by removing the authority to use installment payments and set-asides for small businesses, and by a Commission that commits to enforce its rules on all parties equally and consistently. A complete report to Congress must emphasize the

efficiency and fairness of the auction process to all participants,
both past and future.

Respectfully submitted,

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By, 

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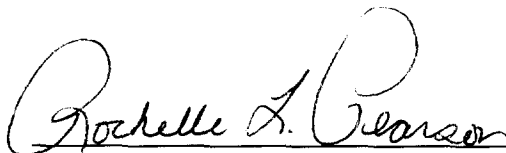
Dated: August 1, 1997

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 1st day of August, 1997, I caused a copy of the attached Comments of Nextel Communications, Inc. to be served hand delivery to the following:

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A handwritten signature in cursive script, reading "Rochelle L. Pearson", written in dark ink. The signature is positioned above a horizontal line.

Rochelle L. Pearson